

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES

In the Matter of Invasive Species/Infested  
Waters Civil Citation #172201 - Steven Michael  
Corkery

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on for a Prehearing Telephone Conference on October 30, 2012. Administrative Law Judge (ALJ) Raymond R. Krause, Conservation Officer Todd Kanieski, and Steven Michael Corkery participated in the Conference. The parties agreed that no formal hearing would be needed and that the ALJ could make a recommendation based on the record created during the Prehearing Telephone Conference. To that end, Officer Kanieski and Steven Michael Corkery testified under oath. The OAH record closed at the conclusion of the Prehearing Conference.

**STATEMENT OF ISSUE**

Whether Steven Michael Corkery transported his boat with the drain plug in place in violation of Minn. Stat. §84D.13.

The Administrative Law Judge concludes that Steven Michael Corkery did transport his boat with the drain plug in place, in violation of Minn. Stat. § 84D.13. Accordingly, the Administrative Law Judge recommends that the Commissioner **AFFIRM** the citation.

Based on the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. On the evening of August 31, 2012, Mr. Corkery had his boat on Lake Minnetonka. Upon removing the boat for the evening, he was met by a Department of Natural Resources inspector. He removed his drain plug and the boat was inspected for invasive species. No invasive species were found.<sup>1</sup>

---

<sup>1</sup> Testimony of Steven Corkery.

2. On September 1, 2012, Mr. Corkery drove his boat to the Gray's Bay landing on Lake Minnetonka. He admits that the drain plug was in place while the boat was being transported. He had replaced the drain plug that morning before leaving for the lake.<sup>2</sup>

3. On September 1, 2012, Officer Kanieski was present at the Gray's Bay landing and observed Mr. Corkery enter the landing area and drive up to the inspection area. The inspector on duty called Officer Kanieski over to Mr. Corkery's boat because the drain plug was found to be in place on the boat.<sup>3</sup>

4. On September 1, 2012, Conservation Officer Kanieski issued Citation No. 172201. The citation asserted that Steven Michael Corkery transported his boat with the drain plug in place.<sup>4</sup>

5. Steven Michael Corkery timely appealed the citation.<sup>5</sup>

Based on the Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Natural Resources have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 84D.13, subd. 8.

2. The Department of Natural Resources provided proper notice and complied with the appropriate procedural rules.

3. Minn. Stat. 84D.13 prohibits the transportation of a watercraft on Minnesota roads while the drain plug is in place.

4. The Department has demonstrated by a preponderance of the evidence that Mr. Corkery transported his boat on September 1, 2012, with the drain plug in place.

Based on the Conclusions, the Administrative Law Judge makes the following:

---

<sup>2</sup> *Id.*

<sup>3</sup> Testimony of Officer Kanieski.

<sup>4</sup> Citation 172201 and Testimony of Officer Kanieski.

<sup>5</sup> Appeal Letter September 6, 2012.

## **RECOMMENDATION**

**IT IS RECOMMENDED** that the Commissioner of Natural Resources **AFFIRM** the citation.

Dated: November 1, 2012

s/Raymond R. Krause

---

Raymond R. Krause  
Chief Administrative Law Judge

Reported: Recorded Digitally

## **NOTICE**

Pursuant to Minn. Stat. § 116.072, subd. 6 (e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner and the Commissioner will consider the comments. The Commissioner must send a copy of the final decision to Steven Michael Corkery. The final order of the Commissioner may be appealed pursuant to Minn. Stat. §§ 14.63-14.69. If the Commissioner fails to act within 90 days after the record closes, this recommendation will become the final decision in this matter.

## **MEMORANDUM**

Mr. Corkery admits that the drain plug was installed in place on his boat while at home on the morning of September 1, 2012. His argument is that his boat had been inspected the night prior, been found to be clean and had the drain plug removed. He acknowledges the need for invasive species enforcement but believes that he complied with the intent of the law by removing the plug on the previous evening.

Mr. Corkery suggests that the Department should treat him as innocent until proven guilty. The Department does not have the burden to prove that he removed or did not remove the drain plug on the previous evening. The Department's burden is simply to prove that the plug was in place while the boat was being transported. Mr. Corkery admits that he did transport the boat in violation of Minn. Stat. 84D.13.

Neither the Conservation Officer nor the ALJ doubt that Mr. Corkery did remove the plug on the previous evening. His testimony was very credible. The statute, however, provides no allowance for what was done previous to the transporting of the boat. The statute is clear; if the boat is transported with the plug in place, it is a violation.

RRK